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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THOMAS STACK, *Plaintiff,* v. McGRAW-HILL SCHOOL EDUCATION HOLDINGS, LLC; McGRAW-HILL GLOBAL EDUCATION HOLDINGS, LLC, *Defendants*.	Case No.: **COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Thomas Stack, by and through undersigned counsel, pursuant to the Federal Rules of Civil Procedure and the applicable Local Rules of this Court, hereby demands a trial by jury of all claims and issues so triable and, for his Complaint against Defendants McGraw-Hill School Education Holdings, LLC and McGraw-Hill Global Education Holdings, LLC, hereby asserts and alleges as follows:

PARTIES

1. Plaintiff Thomas Stack ("Plaintiff" or "Stack") is a resident of the State of Florida.

2. Defendants McGraw-Hill School Education Holdings, LLC, and McGraw-Hill Global Education Holdings, LLC (together "McGraw-Hill" or "Defendants"), both Delaware limited liability companies, were previously part of The McGraw-Hill Companies, Inc., which formally changed its name to McGraw Hill Financial, Inc. on May 1, 2013.

3. Upon information and belief, Defendants assumed the educational publishing businesses previously operated under and by The McGraw-Hill Companies, Inc. and, in doing so, assumed any liabilities related to the claims alleged herein.

JURISDICTION AND VENUE

4. This is an action for copyright infringement and related claims brought by Plaintiff, the owner of copyrights to photographs at issue in this action, against Defendants for unauthorized uses of Plaintiff's copyrighted photographs.

5. Jurisdiction for Plaintiff's claims lies with the United States District Court for the Southern District of New York pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.*, and 28 U.S.C. § 1338(a) (conferring original jurisdiction over claims arising under any act of Congress relating to copyrights).

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(a) and (b) because Defendants conduct substantial business within the State of New York, infringed Plaintiff's copyrights within the State of New York, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the State of New York; and under 28 U.S.C. § 1400(a) since the alleged misconduct by Defendants occurred in this district.

7. Upon information and belief, Defendants have offices located in New York City and conduct substantial business in this District.

FACTUAL ALLEGATIONS

8. Plaintiff is a professional photographer who makes his living by taking and licensing photographs.

9. Plaintiff is the registered copyright owner of the creative works identified herein and that are the subject of this action.

10. A list of the copyrighted works and currently known uses of the photos at issue in this case is attached as Exhibit 1, which is expressly incorporated herein.

11. Plaintiff licenses his work directly and through his company, Tom Stack & Associates.

12. Plaintiff has also utilized certain aliases/pseudonyms for the publishing of his works, including “David Young” and “Brian Parker.”

13. Plaintiff registered copyright in each of the photographs identified herein with the United States Copyright Office prior to initiating this action.

14. McGraw-Hill is a publishing company in the business of creating and publishing educational textbooks, instructional technology materials, reference works, and other similar materials and publications.

15. Defendants sell and distribute textbooks throughout the United States, including through various companies or divisions or imprints.

16. Upon information and belief, Defendants copied and distributed copies of Plaintiff’s copyrighted works without authorization or license and/or in excess of any limited authorization or license they allegedly obtained.

17. In all cases, Plaintiff's images were provided to McGraw-Hill for limited use only and subject to specific terms and conditions.

18. Plaintiff retained all ownership and copyrights to and in his images that were provided to Defendants.

19. In obtaining copies of Plaintiff's photographs for use in its publications, McGraw-Hill represented that it would not make any subsequent uses of Plaintiff's photographs without obtaining prior permission and paying the proper fees.

20. McGraw-Hill also represented that it intended to use Plaintiff's photos in specific publications with limited distributions or print runs.

21. Upon information and belief, McGraw-Hill intentionally underrepresented the uses it intended to make of Plaintiff's photos in order to obtain access to his photos at a lower cost.

22. Despite its representations and in violation of the Copyright Act, McGraw-Hill routinely violated the express restrictions and limits of any limited authorization to use Plaintiff's photos it allegedly obtained related to Plaintiff's photos and also routinely published and/or reused his photos without any license.

23. Upon information and belief, McGraw-Hill infringed Plaintiff's copyrights in the photographs identified herein in various ways, including:

- Publishing Plaintiff's works without permission entirely;
- Reusing Plaintiff's works in subsequent editions of titles without obtaining proper authorization prior to publication;
- Publishing Plaintiff's works prior to obtaining permission;
- Printing and distributing more copies (*i.e.* the "print run") of the publications than was authorized;
- Publishing Plaintiff's works in electronic, ancillary, or derivative publications without permission;
- Publishing Plaintiff's works in foreign editions of publications without permission;
- Distributing publications outside the authorized distribution area; and/or

- Authorizing third-party publishers to create foreign editions, translations, or reprints without requisite license or permission.

24. Plaintiff requested information regarding the use of his photos but McGraw-Hill ignored those requests in an intentional effort to conceal its infringements from discovery.

25. Because McGraw-Hill keeps information regarding its publications and its use of Plaintiff's photographs confidential, Plaintiff is not able to plead with more specificity and the full scope of McGraw-Hill's infringing activities has not yet been fully ascertained. Plaintiff will amend his pleadings following discovery regarding Defendants' use of his photographs.

26. The particular unauthorized uses identified herein are part of a pattern and practice of McGraw-Hill's using third-party photographic images without prior approval and/or in excess of applicable terms of use.

27. This pattern and practice of misappropriating third-party content demonstrates reckless disregard for the rights of the owners of those creative works, including Plaintiff.

28. Plaintiff currently lacks the information necessary to identify the date on which each alleged act of infringement commenced as the information necessary to make that determination is not publicly available and Defendants ignored a request for that information.

29. Upon information and belief, the infringements alleged herein occurred between between 1998 and today, with the respective infringements in proximity to the dates identified in Exhibit 1.

COUNT I
DIRECT, VICARIOUS and/or CONTRIBUTORY COPYRIGHT INFRINGEMENT

30. Plaintiff repeats and re-alleges each allegation set forth in all paragraphs above as if set forth fully herein.

31. The foregoing acts of Defendants constitute direct, contributory, and/or vicarious infringements of Plaintiffs' copyrights in the subject photographs in violation of the Copyright Act.

32. Defendants violated Plaintiff's copyrights by making unauthorized uses of Plaintiff's photographs as described herein.

33. By making unauthorized use of Plaintiff's works, McGraw-Hill misappropriated Plaintiff's intellectual property for its own profit, causing Plaintiff significant injuries, damages, and losses in amounts to be determined at trial.

34. Upon information and belief, in addition to their own unauthorized uses of Plaintiff's photographs, Defendants' infringements also include, but are not limited to, providing copies of Plaintiff's photographs to third parties without permission, engaging third-party printing companies to create more copies of books than was authorized under any alleged license, and engaging/permitting third-party publishers or foreign subsidiaries to use of Plaintiff's photographs in unauthorized foreign editions, translations, or reprints of books.

35. In such instances, Defendants exercised control over the access to Plaintiff's photos and provided copies of his photos to the directly infringing third parties. Defendants thus materially contributed to, facilitated, induced, or otherwise are responsible for the directly infringing acts carried out by the as-of-yet unascertained third parties.

36. Defendants obtained direct financial benefits, including the payment of royalties and other fees related to the sales of the unauthorized publications, and exercised control over the infringements and could have acted to prevent them.

37. McGraw-Hill's unauthorized use of Plaintiff's copyrighted images, including its use and/or reuse of photos without permission and/or using photos in excess of whatever limited authority or permission Defendants allegedly may have obtained, was willful.

38. McGraw-Hill's efforts to conceal and/or subsequently ratify its unauthorized use of Plaintiff's creative works demonstrate that it was fully aware that its use was unauthorized and thus infringing and that this conduct was willful.

39. Plaintiff seeks all damages recoverable under the Copyright Act, including statutory or actual damages, including Defendants' profits attributable to the infringing use of Plaintiff's creative works, and the damages suffered as a result of the lack of compensation, credit, and attribution. Plaintiff also seeks all attorneys' fees and any other costs incurred in pursuing and litigating this matter.

WHEREFORE, Plaintiff respectfully prays for judgment on his behalf and for a jury trial seeking the following relief:

1. A preliminary and permanent injunction against Defendants from copying, displaying, distributing, advertising, promoting, and/or selling the infringing publications identified herein, and requiring Defendants to deliver to the Court for destruction or other appropriate disposition all relevant materials, including digital files of Plaintiff's photographs and all copies of the infringing materials described in this complaint that are in the control or possession or custody of Defendants;

2. All allowable damages under the Copyright Act, including, but not limited to, statutory or actual damages, including damages incurred as a result of Plaintiff's loss of licensing revenue and Defendants' profits attributable to infringement, and damages suffered as a result of the lack of credit and attribution;

3. Plaintiff's full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized under law, and attorneys' fees incurred in pursuing and litigating this matter;

4. Any other relief authorized by law, including punitive and/or exemplary damages; and

5. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Dated: March 7, 2017
New York, New York.

Respectfully submitted,

THE MCCULLOCH LAW FIRM, PLLC

By: ______________________

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